

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No. 914 to 935 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? No
2. To be referred to the RepoGrter or not? No :
3. Whether Their Lordships wish to see the fair copy : YES
of the judgement? No
4. Whether this case involves a substantial question : YES
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

MOTIBHAI CHAGANBHAI

Versus

STATE OF GUJARAT, LAND ACQ OFFICER

Appearance:

MR GM AMIN for appellant

MR HL JANI, A.G.P. for Respondent no.1

MR JC SHETH for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/07/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

By means of filing these appeals under section 54
of the Land Acquisition Act, 1894 read with section 96 of

the Code of Civil Procedure, 1908, the respective appellant/s has/have prayed to award more compensation than Rs. 500/- per Are awarded for irrigated lands and Rs. 350/- per Are awarded for non-irrigated lands by common judgment and award dated September 11, 1990 rendered by the learned Assistant Judge, Sabarkantha at Himatnagar in Land Acquisition Reference Cases No.456/87 to 475/87. We may state that as the claimants had proposed to lead common evidence, all the reference cases were consolidated with Land Acquisition Reference Case No.456/87, which was treated as the main case and the parties had led common evidence therein. As common questions of fact and law are involved in these appeals, we propose to dispose of them by this common judgment.

2. The Executive Engineer, Survey and Construction, Western Railway, Ahmedabad had proposed to acquire agricultural lands of village Dhansura, Taluka : Modasa, District : Sabarkantha for public purpose of railway. On scrutiny of the said proposal, State Government was satisfied that agricultural lands of village Dhansura were likely to be needed for the said public purpose. Therefore, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued which was published in Government Gazette on May 17, 1980. The owners whose lands were proposed to be acquired were served with notices and they had filed their objections against the proposed acquisition. After considering their objections, Land Acquisition Officer had forwarded his report to the State Government as contemplated by section 5A(2) of the Act. On consideration of the said report, State Government was satisfied that agricultural lands of village Dhansura specified in the notification published under section 4(1) of the Act were needed for public purpose of railway. Therefore, declaration under section 6 of the Act was made which was published in Government Gazette on November 14, 1980. The interested persons were thereafter served with notices for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 1000/- per Are. However, having regard to the materials placed before him, the Land Acquisition Officer by his award dated March 31, 1982 offered compensation to the claimants at the rate of Rs. 140/- per Are for irrigated lands and Rs. 100/- per Are for non-irrigated lands. The claimants were of the view that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they made applications in writing requiring the Land Acquisition Officer to refer the matter to the Court for determination of appropriate

compensation. Accordingly, references were made to the District Court, Sabarkantha, which were numbered as Land Acquisition Reference Cases No. 456/87 to 475/87. In the reference applications, it was averred by the claimants that the lands acquired were highly fertile and as the claimants were deriving substantial income from the sale of agricultural produces, they should be awarded higher compensation. The claimants also pleaded that there was an overall development quite near the acquired lands and, therefore, they should be awarded compensation at the rate of Rs. 1000/- per Are. The Executive Engineer, Western Railway, Ahmedabad filed written statement at Exh.9 and controverted the averments made in the reference applications. In the said reply, it was stated that after taking into consideration the situation of the lands acquired, development which had taken place in nearby areas, income derived from sale of agricultural produces etc., Land Acquisition Officer had determined compensation and as the compensation determined by the Land Acquisition Officer was just and adequate, reference applications should be dismissed. On behalf of the State Government, a purshis at Exh.10 was submitted by which reply filed by the Executive Engineer, Western Railway, Ahmedabad was adopted. Upon rival assertions of the parties, necessary issues for determination were raised by the Reference Court at Exh.14. In support of the claim advanced in reference applications, the claimants examined witnesses (1) Shakarabhai Makanabhai at Exh.20 and (2) Chimanbhai Bababhai Patel at Exh.48. On behalf of the acquiring authorities, witness Govindbhai Somabhai Patel was examined at Exh.57. The claimants produced sale index at Exh.58. Witness Shakarabhai Makanabhai produced sale deed at Exh.49, which indicated that non-agricultural land admeasuring 37 gunthas was sold at the price of Rs. 1324/- by deed dated January 24, 1977. On behalf of the claimants, previous award of the Reference Court rendered in Land Reference Cases No.471/84 to 494/84 was produced at Exh.78, which indicated that market value of agricultural lands of village Rahiyol was assessed at Rs. 262/- per Are as on February 25, 1980 which was the date of publication of notification under section 4(1) of the Act. Another award rendered in Land Reference Cases No.117/86 to 142/86 was produced at Exh.74 wherein market value of the lands of village Bayad was determined to be Rs.750/- per Are as on January 24, 1980, which was the date of publication of notification under section 4(1) of the Act. The witness examined on behalf of the claimants had also given particulars as to what was the quantity of crops of ground-nut, maize, raida, millet etc. raised on the lands acquired as well as their prices at the

relevant time. On appreciation of evidence led by the parties, the Reference Court deduced that on the basis of sale indexes, the market value of the lands acquired should be assessed at the rate of Rs. 500/- per Are for irrigated lands and Rs. 350/- per Are for non-irrigated lands. The Reference Court also took into consideration different crops which were being raised on the acquired lands and after taking into consideration their respective prices, held that even on yield basis, the claimants were entitled to compensation at the rate of Rs.500/- per Are for irrigated lands and Rs. 350/- per Are for non-irrigated lands, by the impugned common award dated September 11, 1990, which has given rise to present appeals.

3. Mr. G.M.Amin, learned Counsel for the appellants submitted that while determining market value of the acquired lands with reference to sale deed Exh.49, Reference Court was not justified in making deduction to the extent of 33% from the price indicated by the said deed on the ground that the extent of land sold by Exh.49 was small in comparison to the extent of lands acquired in the present case and, therefore, the claimants should be awarded higher compensation on the basis of the said document; whereas Mr. H.L.Jani, learned A.G.P. submitted that the Reference Court was justified in making deductions as indicated in para-10 of the impugned award and, therefore, additional compensation as claimed by the appellants should not be awarded to them.

4. We have heard the learned Counsel for the parties. We have also taken into consideration the oral as well as documentary evidence produced by the parties on the record of the case. In *Special Land Acquisition Officer, Devangere v. P. Veerabhadar Appa*, AIR 1984 S.C. 774, it is ruled that yield method can be resorted to only when no other method to ascertain market value of the lands acquired is available. In view of the above statement of law made by the Supreme Court, we are of the opinion that the Reference Court was not justified in determining market value of the lands acquired in the present case on yield basis. The claimants had produced sale instances to enable the Court to determine market value of the acquired lands. Under the circumstances, evidence led by the claimants regarding profits derived by them from sale of agricultural produces raised on the acquired lands will have to be ignored from consideration. Though the claimants had sought to rely on previous awards of the Reference Court, the learned Judge was justified in not placing reliance on them, as they were not comparable at all. We agree with the

reasons given by the learned Judge in Paras 11 & 12 of the impugned common award and we hold that those previous awards cannot be taken into consideration for determining market value of the lands acquired in the present case, as they are not comparable. In view of the above conclusions, the only evidence available to the Court is in the form of sale deed produced by the claimants. Witness Shakarabhai Makanabhai examined at Exh.20 has stated that Chimanbhai Bababhai Patel who was owner of survey No.473/A/1/1 of village Dhansura, had sold the same to Gayatri Rural Co-operative Society by a deed dated January 24, 1997 for a consideration of Rs. 49,001/-. Chimanbhai Bababhai patel whose evidence was recorded at Exh.48, has produced the said sale deed at Exh.49. In view of the deposition of owner who had sold the land to the Society, there is no manner of doubt that sale deed is proved as required by law and can be taken into consideration for the purpose of determining the market value of the lands acquired in this case. The Reference Court deducted 33% from the value of the lands indicated in Exh.49 on the ground that the land sold was small in comparison to the extent of lands acquired. In our view, by deed Exh.49, land admeasuring 37 gunthas was sold and, therefore, this cannot be said to be a sale instance relating to a very small piece of land. Therefore, in our view, the Reference Court was not justified in deducting 33% from the value of the lands as indicated in Exh.49. However, there is no manner of doubt that by Exh.49, non-agricultural lands were sold and, therefore, appropriate deduction will have to be made from the prices as indicated in Exh.49 while determining market value of the lands acquired. The evidence of two witnesses examined on behalf of the claimants shows that village Dhansura is situated on Nadiad - Kapadwanj Highway and is well developed. In the village, there are two government gins, two oil mills, theatre, primary schools, women college, Industrial Training Institute, 7 centres of Sabar Dairy etc. Therefore, the fact that lands acquired have potentiality for use as non-agricultural lands, can hardly be doubted. However, having regard to the location of the lands acquired and the fact that non-agricultural lands were sold by Exh.49, we are of the opinion that interest of justice would be served if 40% is deducted from the value of the lands as indicated in Exh.49 for the purpose of determining market value of the lands acquired in the present case. Making deduction as mentioned above, we hold that the price of irrigated lands acquired in the present case would come to Rs. 7.75 ps. per sq.mt. which is rounded off to Rs.8/per sq.mt. and the market value of the non-agricultural lands acquired in the

present case would be Rs. 6/- per sq.mt. in view of the formula laid down by the Supreme Court in Kantaben Manibhai Amin and another v. Special Land Acquisition Officer, Baroda, AIR 1990 S.C. 103. Thus, we hold that the claimants are entitled to compensation at the rate of Rs. 800/- per Are for irrigated lands and Rs. 600/- per Are for non-irrigated lands.

For the foregoing reasons, all the appeals are partly allowed. It is held that the claimants are entitled to receive compensation at the rate of Rs. 800/per Are for agricultural lands and Rs.600/- per Are for non-agricultural lands. Rest of the directions given in the impugned award are hereby upheld. There shall be no orders as to costs. Office is directed to draw decree in terms of this judgment.

(patel)